

(d) As a general rule, OPDIVs shall use contracts for the following purposes:

(1) Evaluation (including research of an evaluative nature) of the performance of Government programs or projects or grantee activity initiated by the funding agency for its direct benefit or use.

(2) Technical assistance rendered to the Government, or on behalf of the Government, to any third party, including those receiving grants or cooperative agreements.

(3) Surveys, studies, and research which provide specific information desired by the Government for its direct activities, or for dissemination to the public.

(4) Consulting services or professional services of all kinds if provided to the Government or, on behalf of the Government, to any third party.

(5) Training projects where the Government selects the individuals or specific groups whose members are to be trained or specifies the content of the curriculum (not applicable to fellowship awards).

(6) Production of publications or audiovisual materials the Government requires primarily for the conduct of its direct operations.

(7) Design or development of items for Government use or pursuant to agency definition or specifications.

(8) Conferences conducted on the Government's behalf.

(9) Generation of management information or other data for Government use.

#### **307.7002 Procedures.**

(a) OPDIV program officials shall use existing budget and program planning procedures to propose new activities and major changes in ongoing programs. OPDIV program officials shall meet with the HCA and the Chief Grants Management Officer, or their designees, as necessary, to determine whether award is to be made through the acquisition or assistance process. This determination shall normally occur prior to the time when the AAP is reviewed and approved so that the AAP will reflect all known proposed contract actions. The HCA shall fully document a shift from one award in-

strument to another in the appropriate files to show a fundamental change in program purpose that unequivocally justifies the rationale for the shift.

(b) The Contracting Officer shall confirm the appropriateness of the use of the contract instrument when reviewing the AP or other acquisition request document.

(c) OPDIVs shall ensure that the choice of instrument is in accordance with 31 U.S.C. 6301–6308 and applicable HHS policies. If, however, there are major individual transactions or programs which contain elements of both acquisition and assistance in such a way that they cannot be characterized as having a principal purpose of one or the other instrument, OPDIVs shall obtain guidance from ASFR/OGAPA/DA, through appropriate acquisition channels, including the HCA, before proceeding with a determination.

(d) Any public notice, program announcement, solicitation, or request for applications or proposals, or request for quotations shall indicate whether the intended relationship will be one of acquisition or financial assistance and specify the award instrument the OPDIV will use.

### **Subpart 307.71—Acquisition Plan**

#### **307.7100 Scope of subpart.**

*FAR 7.102* requires acquisition planning for all acquisitions. This subpart establishes: (a) when a written AP is required; (b) its contents and format; and (c) the need for review of the AP to certify that it is accurate, complete, and in the proper format. This subpart also establishes the documentation requirements for those acquisitions not requiring an AP.

#### **307.7101 Policy.**

(a) An AP is required for all acquisitions, to be placed by an HHS contracting office, expected to exceed \$500,000 (inclusive of options) with the following exceptions:

(1) Letter contracts.

(2) Unsolicited proposals.

(3) Regulated utility services available from only one source.

(4) Proposals under the Small Business Innovative Research (SBIR) and

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Small Business Technology Transfer (STTR) programs.

(5) Acquisition of commercial items/services—*see FAR 2.101*, including orders placed under FSS contracts meeting the definition of a commercial item/service, and not exceeding \$5.5 million [\$11 million for acquisitions as described in *FAR 13.500(e)*].

(6) Task orders or delivery orders of any dollar amount placed under—

(i) An IDIQ contract, other than a GWAC; or

(ii) A BPA, provided there is an approved acquisition planning document for the original action, and there is no significant deviation from that plan.

(7) Orders of any dollar amount placed under HHS-wide strategic sourcing vehicles.

(8) Contract/order modifications that—

(i) Exercise options;

(ii) Only provide additional funding; or

(iii) Make changes authorized by the Changes clause.

(9) Assisted acquisitions processed pursuant to an interagency agreement. However, the OPDIV must comply with the requirements specified in *317.5 Interagency Agreements* under the Economy Act and *317.70, Multi-agency and Intra-agency Contracts*.

(b) In urgent or other justifiable cases, such as an emergency acquisition—*see FAR Part 18*, the HCA may waive, in writing, the requirement for completion of an AP. An HCA shall not approve a waiver request based on the lack of advance planning.

(1) The Project Officer, the Project Officer's immediate supervisor, the head of the sponsoring program office, the Contracting Officer, and other signatories shall sign the waiver request in accordance with OPDIV policies. In OPDIVs where a CCO(s) is designated, as defined in *302.101*, the cognizant CCO also shall sign the waiver request.

(2) HHS has established a standard format for preparing an AP waiver request. The template for the waiver request is available on the ASFR/OGAPA/DA Internet Web site. Contracting activities shall use this format when requesting a waiver.

(3) The OPDIV shall provide ASFR/OGAPA/DA a copy of any approved

waiver request within 5 business days after HCA approval.

(c) For those acquisitions not requiring an AP, other than assisted acquisitions processed pursuant to an interagency agreement—*see 317.5 and 317.70*, the Project Officer shall provide an acquisition request document (e.g., memorandum, requisition, or other form of transmittal) to the CCO or designee, requesting completion of the required action. The request must include, as applicable: a SOW/PWS (including deliverables and reporting requirements); a certified funding document; source selection strategy and criteria; necessary clearances, approvals, and justifications (e.g., a JOFOC); a milestone schedule; and an independent Government cost estimate.) In addition, OPDIVs shall use the content requirements of the AP as a reference in determining what other information and documentation is necessary to support the intended acquisition. Alternatively, OPDIVs may prescribe use of an AP for acquisitions excepted under *307.7101(a)(1) through (a)(8)*.

[74 FR 62398, Nov. 27, 2009, as amended at 75 FR 21510, Apr. 26, 2010]

### 307.7102 Content.

In accordance with *307.105*, the *FAR*, *HHSAR*, and other Federal requirements that OPDIVs must consider in developing an AP, as well as its format, are stipulated in *307.7103*. An AP shall address each applicable element. As indicated in the instructions, elements that are not applicable to an individual acquisition shall be marked "N/A." The scope and depth of an AP may vary depending on the nature, complexity, and estimated cost of the proposed acquisition. As a result of new or revised *FAR* requirements or other Federal directives, the—

(a) HCA or designee may make any needed interim changes to the AP;

(b) HCA or designee shall notify ASFR/OGAPA/DA of the need to revise the AP; and

(c) ASFR/OGAPA/DA shall update the AP, which would supersede any interim HCA (or designee) changes made